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DEPARTMENT OF EDUCATION

34 CFR Part 461

RIN 1830-AA31

Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act)

AGENCY: Department of Education.

ACTION: Correcting amendment.

SUMMARY: On August 19, 2016, the Department of Education (Department) established regulations to implement changes to the Adult Education and Family Literacy Act (AEFLA) resulting from the enactment of the Workforce Innovation and Opportunity Act (WIOA or the Act). The 2016 final regulations clarified provisions in AEFLA and also identified for removal regulations no longer applicable to the AEFLA program. The preamble discussed our intent to remove certain regulations. However, language necessary to remove those regulations from the Code of Federal Regulations was inadvertently omitted from the 2016 final rule. Through this document we are now removing those regulations.

DATES: Effective date: These regulations are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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(TDD) or text telephone (TTY), call the Federal Relay
Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Final Regulatory Changes

Background:

On April 16, 2015, we published in the *Federal Register* a notice of proposed rulemaking (NPRM) for the Programs and Activities Authorized by AEFLA under Title II of WIOA (80 FR 20968). References to 34 CFR part 461 were included in that NPRM. In the Background section we indicated that the Department proposes to remove 34 CFR parts 460 and 461 "because these regulations are no longer applicable to the Federal adult education program." These regulations are no longer enforceable because they were promulgated under the National Literacy Act (Pub. L. 102-73) (NLA) in 1992, which was superseded by Title II of the Workforce Investment Act of 1998.

On August 19, 2016, the Department issued a final rule in which the Secretary established regulations to implement

changes to AEFLA resulting from the enactment of WIOA (81 FR 55525). These final regulations clarified the provisions in AEFLA, and the preamble also discussed our intent to remove 34 CFR part 461. However, we inadvertently omitted language necessary to remove 34 CFR part 461 from the Code of Federal Regulations.

Through this document, we are amending the regulations in title 34 of the Code of Federal Regulations applicable to Programs and Activities Authorized by AEFLA (Title II of WIOA) to remove 34 CFR part 461.

This action is consistent with Executive Order 13777, "Enforcing the Regulatory Reform Agenda," signed by President Trump on February 24, 2017. That Executive Order established a Federal policy to alleviate unnecessary regulatory burdens on the American people and, in Section 3(a), directed each Federal agency to establish a regulatory reform task force, the duty of which is to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification.

Waiver of Proposed Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations.

However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b) (B)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is "unnecessary" in those situations in which "the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." Utility Solid Waste Activities Group v. EPA, 236 F.3d 749, 755 (D.C. Cir. 2001), quoting U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act 31 (1947) and South Carolina v. Block, 558 F. Supp. 1004, 1016 (D.S.C. 1983).

This regulatory action merely effectuates our intent from the 2016 rulemaking to remove 34 CFR part 461 from the Code of Federal Regulations. In 2016, when we intended to remove 34 CFR part 461 from the Code of Federal Regulations, we provided notice and an opportunity to comment on this regulatory action. At that time, we received no comments regarding the proposed removal of 34 CFR part 461. Furthermore, these regulations were promulgated under the National Literacy Act (Pub. L. 102-

73) (NLA) in 1992, which was superseded by Title II of the Workforce Investment Act of 1998. Therefore, there is good cause to remove 34 CFR part 461.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). For the same reasons there is good cause to waive rulemaking under 5 U.S.C. 553(b)(B), there is good cause to make these final regulations effective upon publication.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 601(2), the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

This rule does not contain any information collection requirements. The previously OMB-approved information collection (OMB Control Number 1800-0026) associated with 34 CFR part 461 expired on 03/01/2006.

Accessible Format:

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in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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List of Subjects in 34 CFR Part 461

Adult education, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

Dated: February 26, 2019.

Scott Stump,
*Assistant Secretary for Career,
Technical, and Adult Education.*

PART 461 [Removed and Reserved]

For the reasons discussed in the preamble, and under the authority of section 414 of the Department of Education Organization Act, 20 U.S.C. 3474, and section 437 of the General Education Provisions Act (20 U.S.C. 1221e-3), the Secretary of Education amends chapter IV of title 34 of the Code of Federal Regulations by removing and reserving part 461.

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